

Introduced by Senator Florez

February 22, 2006

An act to amend Section 68152 of the Government Code, and to amend Section 1192.7 of, and to add Section 13105 to, the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1393, as introduced, Florez. Sex offenders: prosecution.

Existing law sets forth timelines for the retention of court records, depending upon the subject matter or criminal offense.

This bill would require courts to keep all records relating to persons required to register as sex offenders for the life of the offender. The bill also would prohibit a state or local law enforcement agency from destroying any records relating to a registered sex offender for the life of the offender. Because the bill would impose new responsibilities on local agencies, the bill would impose a state-mandated local program.

Existing law, added by an initiative statute that provides for amendment of its provision by 2/3 vote of the Legislature, prohibits plea bargaining in certain felony cases, except as specified.

This bill would state the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under "one strike," "3 strikes" or habitual sexual offender laws instead of engaging in plea bargaining, and would require a district attorney to state on the record why a sentence should not be prosecuted under those provisions, if he or she engages in plea bargaining despite the stated intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 68152 of the Government Code is
2 amended to read:
3 68152. The trial court clerk may destroy court records under
4 Section 68153 after notice of destruction and if there is no
5 request and order for transfer of the records, except the
6 comprehensive historical and sample superior court records
7 preserved for research under the California Rules of Court, when
8 the following times have expired after final disposition of the
9 case in the categories listed:
10 (a) Adoption: retain permanently.
11 (b) Change of name: retain permanently.
12 (c) Other civil actions and proceedings, as follows:
13 (1) Except as otherwise specified: 10 years.
14 (2) Where a party appears by a guardian ad litem: 10 years
15 after termination of the court's jurisdiction.
16 (3) Domestic violence: same period as duration of the
17 restraining or other orders and any renewals, then retain the
18 restraining or other orders as a judgment; 60 days after expiration
19 of the temporary protective or temporary restraining order.
20 (4) Eminent domain: retain permanently.
21 (5) Family law, except as otherwise specified: 30 years.
22 (6) Harassment: same period as duration of the injunction and
23 any renewals, then retain the injunction as a judgment; 60 days
24 after expiration of the temporary restraining order.
25 (7) Mental health (Lanterman Developmental Disabilities
26 Services Act and Lanterman-Petris-Short Act): 30 years.
27 (8) Paternity: retain permanently.
28 (9) Petition, except as otherwise specified: 10 years.
29 (10) Real property other than unlawful detainer: retain
30 permanently if the action affects title or an interest in real
31 property.

1 (11) Small claims: 10 years.

2 (12) Unlawful detainer: one year if judgment is for possession
3 of the premises; 10 years if judgment is for money.

4 (d) Notwithstanding subdivision (c), any civil or small claims
5 case in the trial court:

6 (1) Involuntarily dismissed by the court for delay in
7 prosecution or failure to comply with state or local rules: one
8 year.

9 (2) Voluntarily dismissed by a party without entry of
10 judgment: one year.

11 Notation of the dismissal shall be made on the civil index of
12 cases or on a separate dismissal index.

13 (e) Criminal.

14 (1) Capital felony (murder with special circumstances where
15 the prosecution seeks the death penalty): retain permanently. If
16 the charge is disposed of by acquittal or a sentence less than
17 death, the case shall be reclassified.

18 (2) Felony, except as otherwise specified: 75 years.

19 (3) Felony, except capital felony, with court records from the
20 initial complaint through the preliminary hearing or plea and for
21 which the case file does not include final sentencing or other
22 final disposition of the case because the case was bound over to
23 the superior court: five years.

24 (4) Misdemeanor, except as otherwise specified: five years.

25 (5) Misdemeanor alleging a violation of the Vehicle Code,
26 except as otherwise specified: three years.

27 (6) Misdemeanor alleging a violation of Section 23103, 23152,
28 or 23153 of the Vehicle Code: 10 years.

29 (7) Misdemeanor alleging a violation of Section 14601,
30 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

31 (8) Misdemeanor alleging a marijuana violation under
32 subdivision (b), (c), (d), or (e) of Section 11357 of the Health and
33 Safety Code, or subdivision (b) of Section 11360 of the Health
34 and Safety Code in accordance with the procedure set forth in
35 Section 11361.5 of the Health and Safety Code: records shall be
36 destroyed two years from the date of conviction or from the date
37 of arrest if no conviction.

38 (9) Misdemeanor, infraction, or civil action alleging a
39 violation of the regulation and licensing of dogs under Sections

1 30951 to 30956, inclusive, of the Food and Agricultural Code or
2 violation of any other local ordinance: three years.

3 (10) Infraction, except as otherwise specified: three years.

4 (11) Parking infractions, including alleged violations under the
5 stopping, standing, and parking provisions set forth in Chapter 9
6 (commencing with Section 22500) of Division 11 of the Vehicle
7 Code: two years.

8 (12) *Records relating to a person required to register as a sex*
9 *offender pursuant to Section 290 of the Penal Code: retain for*
10 *the life of the offender.*

11 (f) Habeas corpus: same period as period for retention of the
12 records in the underlying case category.

13 (g) Juvenile.

14 (1) Dependent (Section 300 of the Welfare and Institutions
15 Code): upon reaching age 28 or on written request shall be
16 released to the juvenile five years after jurisdiction over the
17 person has terminated under subdivision (a) of Section 826 of the
18 Welfare and Institutions Code. Sealed records shall be destroyed
19 upon court order five years after the records have been sealed
20 pursuant to subdivision (c) of Section 389 of the Welfare and
21 Institutions Code.

22 (2) Ward (Section 601 of the Welfare and Institutions Code):
23 upon reaching age 21 or on written request shall be released to
24 the juvenile five years after jurisdiction over the person has
25 terminated under subdivision (a) of Section 826 of the Welfare
26 and Institutions Code. Sealed records shall be destroyed upon
27 court order five years after the records have been sealed under
28 subdivision (d) of Section 781 of the Welfare and Institutions
29 Code.

30 (3) Ward (Section 602 of the Welfare and Institutions Code):
31 upon reaching age 38 under subdivision (a) of Section 826 of the
32 Welfare and Institutions Code. Sealed records shall be destroyed
33 upon court order when the subject of the record reaches the age
34 of 38 under subdivision (d) of Section 781 of the Welfare and
35 Institutions Code.

36 (4) Traffic and some nontraffic misdemeanors and infractions
37 (Section 601 of the Welfare and Institutions Code): upon
38 reaching age 21 or five years after jurisdiction over the person
39 has terminated under subdivision (c) of Section 826 of the

1 Welfare and Institutions Code. May be microfilmed or
2 photocopied.

3 (5) Marijuana misdemeanor under subdivision (e) of Section
4 11357 of the Health and Safety Code in accordance with
5 procedures specified in subdivision (a) of Section 11361.5 of the
6 Health and Safety Code: upon reaching age 18 the records shall
7 be destroyed.

8 (h) Probate.

9 (1) Conservatorship: 10 years after decree of termination.

10 (2) Guardianship: 10 years after the age of 18.

11 (3) Probate, including probated wills, except as otherwise
12 specified: retain permanently.

13 (i) Court records of the appellate division of the superior court:
14 five years.

15 (j) Other records.

16 (1) Applications in forma pauperis: any time after the
17 disposition of the underlying case.

18 (2) Arrest warrant: same period as period for retention of the
19 records in the underlying case category.

20 (3) Bench warrant: same period as period for retention of the
21 records in the underlying case category.

22 (4) Bond: three years after exoneration and release.

23 (5) Coroner's inquest report: same period as period for
24 retention of the records in the underlying case category; if no
25 case, then permanent.

26 (6) Court orders not associated with an underlying case, such
27 as orders for destruction of court records for telephone taps, or to
28 destroy drugs, and other miscellaneous court orders: three years.

29 (7) Court reporter notes: 10 years after the notes have been
30 taken in criminal and juvenile proceedings and five years after
31 the notes have been taken in all other proceedings, except notes
32 reporting proceedings in capital felony cases (murder with
33 special circumstances where the prosecution seeks the death
34 penalty and the sentence is death), including notes reporting the
35 preliminary hearing, which shall be retained permanently, unless
36 the Supreme Court on request of the court clerk authorizes the
37 destruction.

38 (8) Electronic recordings made as the official record of the
39 oral proceedings under the California Rules of Court: any time
40 after final disposition of the case in infraction and misdemeanor

1 proceedings, 10 years in all other criminal proceedings, and five
2 years in all other proceedings.

3 (9) Electronic recordings not made as the official record of the
4 oral proceedings under the California Rules of Court: any time
5 either before or after final disposition of the case.

6 (10) Index, except as otherwise specified: retain permanently.

7 (11) Index for cases alleging traffic violations: same period as
8 period for retention of the records in the underlying case
9 category.

10 (12) Judgments within the jurisdiction of the superior court
11 other than in a limited civil case, misdemeanor case, or infraction
12 case: retain permanently.

13 (13) Judgments in misdemeanor cases, infraction cases, and
14 limited civil cases: same period as period for retention of the
15 records in the underlying case category.

16 (14) Minutes: same period as period for retention of the
17 records in the underlying case category.

18 (15) Naturalization index: retain permanently.

19 (16) Ninety-day evaluation (under Section 1203.03 of the
20 Penal Code): same period as period for retention of the records in
21 the underlying case category, or period for completion or
22 termination of probation, whichever is longer.

23 (17) Register of actions or docket: same period as period for
24 retention of the records in the underlying case category, but in no
25 event less than 10 years for civil and small claims cases.

26 (18) Search warrant: 10 years, except search warrants issued in
27 connection with a capital felony case defined in paragraph (7),
28 which shall be retained permanently.

29 (k) Retention of any of the court records under this section
30 shall be extended as follows:

31 (1) By order of the court on its own motion, or on application
32 of a party or any interested member of the public for good cause
33 shown and on those terms as are just. A fee shall not be charged
34 for making the application.

35 (2) Upon application and order for renewal of the judgment to
36 the extended time for enforcing the judgment.

37 SEC. 2. Section 1192.7 of the Penal Code is amended to read:

38 1192.7. (a) ~~Plea~~ *(1) It is the intent of the Legislature that*
39 *district attorneys prosecute violent sex crimes under the statutes*
40 *that provide sentencing under a “one strike,” “three strikes,” or*

1 *habitual sex offender provisions instead of engaging in plea*
2 *bargaining over those offenses.*

3 (2) *Plea bargaining in any case in which the indictment or*
4 *information charges any serious felony, any felony in which it is*
5 *alleged that a firearm was personally used by the defendant, or*
6 *any offense of driving while under the influence of alcohol,*
7 *drugs, narcotics, or any other intoxicating substance, or any*
8 *combination thereof, is prohibited, unless there is insufficient*
9 *evidence to prove the people’s case, or testimony of a material*
10 *witness cannot be obtained, or a reduction or dismissal would not*
11 *result in a substantial change in sentence.*

12 (3) *If the indictment or information charges the defendant with*
13 *a violent sex crime, as listed in subdivision (c) of Section 667.61,*
14 *that could be prosecuted under Section 269, subdivisions (b)*
15 *through (i) of Section 667, or Sections 667.61 or 667.71, and the*
16 *district attorney engages in a plea bargain, he or she shall state*
17 *on the record, at the time of presenting the plea agreement to the*
18 *court, why a sentence under one of those sections was not sought.*

19 (b) As used in this section “plea bargaining” means any
20 bargaining, negotiation, or discussion between a criminal
21 defendant, or his or her counsel, and a prosecuting attorney or
22 judge, whereby the defendant agrees to plead guilty or nolo
23 contendere, in exchange for any promises, commitments,
24 concessions, assurances, or consideration by the prosecuting
25 attorney or judge relating to any charge against the defendant or
26 to the sentencing of the defendant.

27 (c) As used in this section, “serious felony” means any of the
28 following:

29 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
30 (4) sodomy by force, violence, duress, menace, threat of great
31 bodily injury, or fear of immediate and unlawful bodily injury on
32 the victim or another person; (5) oral copulation by force,
33 violence, duress, menace, threat of great bodily injury, or fear of
34 immediate and unlawful bodily injury on the victim or another
35 person; (6) lewd or lascivious act on a child ~~under the age of 14~~
36 *years of age*; (7) any felony punishable by death or imprisonment
37 in the state prison for life; (8) any felony in which the defendant
38 personally inflicts great bodily injury on any person, other than
39 an accomplice, or any felony in which the defendant personally
40 uses a firearm; (9) attempted murder; (10) assault with intent to

1 commit rape or robbery; (11) assault with a deadly weapon or
2 instrument on a peace officer; (12) assault by a life prisoner on a
3 noninmate; (13) assault with a deadly weapon by an inmate; (14)
4 arson; (15) exploding a destructive device or any explosive with
5 intent to injure; (16) exploding a destructive device or any
6 explosive causing bodily injury, great bodily injury, or mayhem;
7 (17) exploding a destructive device or any explosive with intent
8 to murder; (18) any burglary of the first degree; (19) robbery or
9 bank robbery; (20) kidnapping; (21) holding of a hostage by a
10 person confined in a state prison; (22) attempt to commit a felony
11 punishable by death or imprisonment in the state prison for life;
12 (23) any felony in which the defendant personally used a
13 dangerous or deadly weapon; (24) selling, furnishing,
14 administering, giving, or offering to sell, furnish, administer, or
15 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
16 methamphetamine-related drug, as described in paragraph (2) of
17 subdivision (d) of Section 11055 of the Health and Safety Code,
18 or any of the precursors of methamphetamines, as described in
19 subparagraph (A) of paragraph (1) of subdivision (f) of Section
20 11055 or subdivision (a) of Section 11100 of the Health and
21 Safety Code; (25) any violation of subdivision (a) of Section 289
22 where the act is accomplished against the victim's will by force,
23 violence, duress, menace, or fear of immediate and unlawful
24 bodily injury on the victim or another person; (26) grand theft
25 involving a firearm; (27) carjacking; (28) any felony offense,
26 which would also constitute a felony violation of Section 186.22;
27 (29) assault with the intent to commit mayhem, rape, sodomy, or
28 oral copulation, in violation of Section 220; (30) throwing acid or
29 flammable substances, in violation of Section 244; (31) assault
30 with a deadly weapon, firearm, machinegun, assault weapon, or
31 semiautomatic firearm or assault on a peace officer or firefighter,
32 in violation of Section 245; (32) assault with a deadly weapon
33 against a public transit employee, custodial officer, or school
34 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
35 discharge of a firearm at an inhabited dwelling, vehicle, or
36 aircraft, in violation of Section 246; (34) commission of rape or
37 sexual penetration in concert with another person, in violation of
38 Section 264.1; (35) continuous sexual abuse of a child, in
39 violation of Section 288.5; (36) shooting from a vehicle, in
40 violation of subdivision (c) or (d) of Section 12034; (37)

1 intimidation of victims or witnesses, in violation of Section
2 136.1; (38) criminal threats, in violation of Section 422; (39) any
3 attempt to commit a crime listed in this subdivision other than an
4 assault; (40) any violation of Section 12022.53; (41) a violation
5 of subdivision (b) or (c) of Section 11418; and (42) any
6 conspiracy to commit an offense described in this subdivision.

7 (d) As used in this section, “bank robbery” means to take or
8 attempt to take, by force or violence, or by intimidation from the
9 person or presence of another any property or money or any other
10 thing of value belonging to, or in the care, custody, control,
11 management, or possession of, any bank, credit union, or any
12 savings and loan association.

13 As used in this subdivision, the following terms have the
14 following meanings:

15 (1) “Bank” means any member of the Federal Reserve System,
16 and any bank, banking association, trust company, savings bank,
17 or other banking institution organized or operating under the laws
18 of the United States, and any bank the deposits of which are
19 insured by the Federal Deposit Insurance Corporation.

20 (2) “Savings and loan association” means any federal savings
21 and loan association and any “insured institution” as defined in
22 Section 401 of the National Housing Act, as amended, and any
23 federal credit union as defined in Section 2 of the Federal Credit
24 Union Act.

25 (3) “Credit union” means any federal credit union and any
26 state-chartered credit union the accounts of which are insured by
27 the Administrator of the National Credit Union administration.

28 (e) The provisions of this section shall not be amended by the
29 Legislature except by statute passed in each house by rollcall
30 vote entered in the journal, two-thirds of the membership
31 concurring, or by a statute that becomes effective only when
32 approved by the electors.

33 SEC. 3. Section 13105 is added to the Penal Code, to read:

34 13105. A state or local law enforcement agency shall not
35 destroy any records relating to a person who is required to
36 register as a sex offender pursuant to Section 290, for as long as
37 the person is living.

38 SEC. 4. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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